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State v. Rodriguez Appellant's Brief Dckt. 45013

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. JUAN RODRIGUEZ, JR. AKA JOHNNY RODRIGUEZ, Defendant-Appellant.	)	NOS. 45013 & 45014 CANYON COUNTY NOS. CR 2016-15940 & CR 2016-18973 APPELLANT'S BRIEF

STATEMENT OF THE CASE

Nature of the Case

In two separate cases, Juan Rodriguez, Jr., pleaded guilty to one count each of felony operating a motor vehicle while under the influence of alcohol (DUI). In each case, the district court imposed a unified sentence of ten years, with two years fixed, to run concurrently with each other. In this consolidated appeal, Mr. Rodriguez asserts the district court abused its discretion when it imposed his sentences.

Statement of the Facts & Course of Proceedings

Officer Tucker of the Nampa Police Department saw a black car drive into a construction zone, going around a road barricade stating, "road closed to through traffic." (Presentence Investigation Report (*hereinafter*, PSI), p.3.)[1] After confirming the car was not accessing a residence or business in the closed zone, the officer initiated a traffic stop on the car. (PSI, p.3.) Officer Tucker contacted the driver, identified by an Idaho temporary driver's license as Mr. Rodriguez. (PSI, p.3.) Officer Tucker smelled the odor of an alcoholic beverage coming from the car, and saw Mr. Rodriguez had glossy, bloodshot eyes. (PSI, p.3.) When questioned, Mr. Rodriguez stated he had drank a beer and indicated the beer was in the passenger door pocket. (PSI, p.3.) He then confirmed there was an open container in the car, and handed Officer Tucker two mostly-full cans of hard lemonade. (PSI, p.3.) Mr. Rodriguez failed the administered field sobriety tests, and gave breath samples with results of .137 and .125. (PSI, p.3.) He was transported to jail for driving under the influence and open container. (PSI, p.3.) Mr. Rodriguez was later released on bond. (*See* R., p.19.)[2]

In Canyon County No. CR 2016-15940 (*hereinafter*, the first case), the State charged Mr. Rodriguez by Information with one count of operating a motor vehicle while under the influence of alcohol (second felony within 15 years), felony, I.C. §§ 18-8004 and 18-8005. (R., pp.41-44.)

While Mr. Rodriguez was released on bond for the first case, he failed to appear at a motions hearing, and the district court issued a bench warrant. (*See* R., pp.24, 32.) Two days later, Officer Heitzman of the Nampa Police Department stopped a van for suspicion of DUI.

[1] All citations to the PSI refer to the 46-page PDF version of the Presentence Report and attachments.
[2] All citations to R. refer to the 158-page PDF version of the Clerk's Record.

(*See* PSI, p.3.) The officer had been sent to respond to an unwanted party at a residence, and the reporting party stated a male had left the residence in a van and was intoxicated. (*See* PSI, p.3.) While speaking with the reporting party, Officer Heitzman saw a van whose driver matched the description of the male, and asked the driver to stop. (PSI, p.3.) Officer Heitzman smelled a strong order of an alcoholic beverage coming from the van, and noticed the driver had glassy, bloodshot eyes and slurred speech. (PSI, p.3.) The driver identified himself as Mr. Rodriguez. (PSI, p.3.) Mr. Rodriguez admitted to consuming alcohol prior to driving. (PSI, pp.3-4.) He failed the administered field sobriety tests, and provided three breath samples with results of .275, .254, and .250. (PSI, p.4.) Mr. Rodriguez was transported to jail and booked for driving under the influence, driving without privileges, and open container. (PSI, p.4.)

In Canyon County No. CR 2016-18973 (*hereinafter*, the second case), the State charged Mr. Rodriguez by Information with one count of felony operating a motor vehicle while under the influence of alcohol (second felony within 15 years), one count of driving without privileges, misdemeanor, I.C. § 18-8001, and one count of "liquor open container (driver)," misdemeanor, I.C. § 23-505(2). (R., pp.93-97.)

Mr. Rodriguez initially entered not guilty pleas in both cases. (*See* R., pp.98-99.) Pursuant to a plea agreement, Mr. Rodriguez later agreed to plead guilty to the DUI charges in both cases. (*See* Tr. Dec. 28, 2016, p.1, L.18 – p.2, L.2.) The State agreed to dismiss the two misdemeanors in the second case, and to not pursue a persistent violator sentencing enhancement in either case. (*See* Tr. Dec. 28, 2016, p.1, L.23 – p.3, L.11.) Sentencing recommendations would be open. (Tr. Dec. 28, 2016, p.2, L.2.) The district court accepted Mr. Rodriguez's pleas of guilty in both cases. (Tr. Dec. 28, 2016, p.24, L.22 – p.25, L.10.)

Mr. Rodriguez's PSI recommended he participate in the Canyon County Veterans Treatment Court (Veterans Court) and be placed on probation. (*See* PSI, pp.14-15; Tr. Feb. 22, 2017, p.21, Ls.24-25.) At the sentencing hearing, the district court stated it had received notice from Veterans Court that the State had exercised its authority to veto Mr. Rodriguez's participation as an initial term of his probation, but he might be accepted following a period of retained jurisdiction. (Tr. Feb. 22, 2017, p.15, Ls.11-22.)

The State recommended the district court impose a unified sentence of ten years, with three years fixed, in the first case, and a consecutive unified sentence of five years indeterminate in the second case. (Tr. Feb. 22, 2017, p.21, L.18 – p.22, L.14.) Mr. Rodriguez told the district court he was willing to participate in and successfully complete Veterans Court. (Tr. Feb. 22, 2017, p.25, Ls.21-22.) If that were not an option, Mr. Rodriguez asked the district court to consider retaining jurisdiction, with an underlying unified sentence of ten years, with two years fixed, in each case, to run concurrently with each other. (*See* Tr. Feb. 22, 2017, p.25, L.23 – p.26, L.16.)

In each case, the district court imposed a unified sentence of ten years, with two years fixed, to run concurrently with each other. (R., pp.63-64, 131-32.) When explaining why it would not retain jurisdiction, the district court noted, "this is his third excessive DUI and that he committed the fourth DUI offense while he was bonded out and pending the third DUI offense, both of which are more aggravating, in my estimation." (*See* Tr. Feb. 22, 2017, p.32, Ls.16-25.) The district court also stated the fact that Mr. Rodriguez had previously completed a problem-solving court, but not continued his rehabilitation or sobriety, was "aggravating in the sense that the Court is not convinced that the problem-solving courts will adequately address his needs and protect society at the same time." (Tr. Feb. 22, 2017, p.33, Ls.3-15.)

In each case, Mr. Rodriguez filed a Notice of Appeal timely from the district court's Judgment and Commitment. (R., pp.65-68, 133-36.) The Idaho Supreme Court consolidated the two appeals. (Nos. 45013 & 45014, Order to Consolidate Appeals for All Purposes, Apr. 24, 2017.)

Mr. Rodriguez also filed, in each case, a Motion and Memorandum in Support of Idaho Criminal Rule 35 Motion for Reduction of Sentence. (*See* R., pp.144-52.) Mr. Rodriguez asserted the State had violated the terms of the plea agreement and exceeded its authority by vetoing his participation in Veterans Court. (*See* R., pp.148-51.) The district court denied Mr. Rodriguez's Rule 35 motions, on the basis the district court would not have placed him on probation with Veterans Court, even absent the State's veto. (Nos. CR 2016-15940 & CR 2016-18973, Order Denying Motion for Reduction of Sentence Pursuant to I.C.R. 35, July 20, 2017.)[3] On appeal, Mr. Rodriguez does not challenge the denial of his Rule 35 motions.[4]

[3] The Order Denying Motion for Reduction of Sentence Pursuant to I.C.R. 35 is the subject of a Motion to Augment, filed contemporaneously with this brief.

[4] The district court observed, "even though the court agrees that the terms of the plea agreement were likely violated, and that the prosecutorial veto exercised in this case likely violated the rule announced in [*State v. Easley*, 156 Idaho 214 (2014)], it isn't clear to the court that a reduced sentence pursuant to I.C.R. 35 is [an] appropriate remedy or is warranted in these cases." (Order Denying Motion to Reconsider Sentence Pursuant to I.C.R. 35, p.9.) The district court further stated, "no new information has been presented in support of the defendant's motion." (Order Denying Motion to Reconsider Sentence Pursuant to I.C.R. 35, p.9.)

The Idaho Supreme Court has held that "[w]hen presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." *State v. Huffman*, 144 Idaho 201, 203 (2007). "An appeal from the denial of a Rule 35 motion cannot be used as a vehicle to review the underlying sentence absent the presentation of new information." *Id.*

ISSUE

Did the district court abuse its discretion when it imposed two concurrent unified sentences of ten years, with two years fixed, upon Mr. Rodriguez following his pleas of guilty to felony operating a motor vehicle while under the influence of alcohol?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Two Concurrent Unified Sentences Of Ten Years, With Two Years Fixed, Upon Mr. Rodriguez Following His Pleas Of Guilty To Felony Operating A Motor Vehicle While Under The Influence Of Alcohol

Mr. Rodriguez asserts the district court abused its discretion when it imposed his concurrent unified sentences of ten years, with two years fixed, because his sentences are excessive considering any view of the facts. The district court should have instead followed Mr. Rodriguez's recommendation by retaining jurisdiction with the same underlying sentences.

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving "due regard to the nature of the offense, the character of the offender, and the protection of the public interest." *State v. Strand*, 137 Idaho 457, 460 (2002).

The Idaho Supreme Court has held that, "[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence." *State v. Jackson*, 130 Idaho 293, 294 (1997) (internal quotation marks omitted). Mr. Rodriguez does not assert that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Rodriguez must show that in light of the governing criteria, the sentences were excessive considering any view of the facts. *Id*. The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id*. An appellate court, "[w]hen reviewing the length of a

sentence . . . consider[s] the defendant's entire sentence." *State v. Oliver*, 144 Idaho 722, 726 (2007). The reviewing court will "presume that the fixed portion of the sentence will be the defendant's probable term of confinement." *Id.*

Mr. Rodriguez asserts his sentences are excessive considering any view of the facts, because the district court did not adequately consider mitigating factors. Specifically, the district court did not adequately consider Mr. Rodriguez's military service. While the district court characterized Mr. Rodriguez's military service as a "significant mitigating factor[]," (*see* Tr. Feb. 22, 2017, p.28, L.24 – p.29, L.2), Mr. Rodriguez submits the district court did not go far enough in considering his time in the military. Mr. Rodriguez served with the United States Marine Corps from 2005 to 2012. (*See* PSI, pp.9-10.) He was deployed to Iraq in 2008. (PSI, p.10.) Mr. Rodriguez was honorably discharged in 2012 at the rank of E-3. (PSI, p.10.) The Canyon County Veteran's Justice Outreach Officer reported Mr. Rodriguez was 70% service connected for PTSD and "other conditions." (PSI, p.10.) At the sentencing hearing, Mr. Rodriguez's counsel stated, "I think that's significant. And I'm sure that affects his life quite a bit." (Tr. Feb. 22, 2017, p.24, Ls.5-7.)

The district court also did not adequately consider Mr. Rodriguez's mental condition. A district court must consider evidence of a defendant's mental condition offered at the time of sentencing. *See* I.C. § 19-2523(1). Here, the district court recognized Mr. Rodriguez suffered from PTSD as a result of his military service, and described that as another significant mitigating factor. (*See* Tr. Feb. 22, 2017, p.28, L.24 – p.29, L.4.) However, Mr. Rodriguez submits the district court did not adequately consider the full scope of his mental health issues. The GAIN-I Recommendation and Referral Summary (GRRS) for Mr. Rodriguez contains rule out diagnoses for both "Posttraumatic Stress Disorder" and "Acute Stress Disorder or other disorder of extreme

stress – Provisional." (PSI, pp.25-26.) He "scored in the moderate range of the Internal Mental Distress Scale" and "self-reported symptoms indicating the possible existence of a stress disorder." (PSI, p.26.) While Mr. Rodriguez stated during the presentence investigation he did not see his PTSD as much of a problem and did not feel he was in need of counseling, he also reported he had been hospitalized at the West Valley Behavioral Health Center in 2009 and 2015. (*See* PSI, p.11.) The presentence report stated Mr. Rodriguez "is not only suffering from the effects of alcoholism, but he has a mental health component as well due to PTSD. It is unlikely his alcoholism would be resolved without treatment of his PTSD as well." (PSI, p.14.)

Additionally, the district court did not adequately consider Mr. Rodriguez's substance abuse problems. The Idaho Supreme Court has recognized substance abuse as a mitigating factor in cases where it found a sentence to be excessive. *See, e.g.*, *State v. Nice*, 103 Idaho 89, 91 (1982). Mr. Rodriguez reported he started drinking at the age of fourteen, and began drinking heavily at the age of twenty-one when he had trouble adjusting from heavy combat to leave. (PSI, p.11.) After Mr. Rodriguez ended his active duty and returned home from Iraq, he drank heavily on a daily basis before his arrest for felony DUI in 2009. (*See* PSI, p.11.) Mr. Rodriguez stated he gave up drinking completely after that offense, finished drug court with no problems, and remained sober for six years. (*See* PSI, p.11.) He began drinking again after he and his wife separated in 2015. (PSI, p.11.)

The GRRS stated Mr. Rodriguez "reported that he has quit using substances and is about 100% to remain abstinent." (PSI, p.31.) The presentence investigator wrote that Veterans Court staff had determined Mr. Rodriguez "would be appropriate for the Veteran's Court program and would benefit from the intensive treatment and structure offered by the program, to address his underlying PTSD and substance abuse and hold him accountable for bad decisions he may make

in the future." (PSI, pp.14-15.) However, the State vetoed Mr. Rodriguez's participation in Veterans Court as an initial term of his probation. (*See* Tr. Feb. 22, 2017, p.15, Ls.11-22.)

Further, the district court did not adequately consider Mr. Rodriguez's work ethic and family support. Mr. Rodriguez worked as a trailer technician at Rush Truck Centers of Idaho from September 2013 until his arrest. (PSI, p.10.) At the sentencing hearing, Mr. Rodriguez's counsel told the district court that while Mr. Rodriguez "can't be a truck driver anymore," he "was able to secure employment at MGM Welding here in Caldwell." (Tr. Feb. 22, 2017, p.25, Ls.13-15.) The GRRS stated that Mr. Rodriguez wanted to move to Texas with his brother to work on oil rigs. (PSI, p.24.) Counsel also informed the district court, "[h]e does have a place to reside here in the community with his mom, who is supportive of him." (Tr. Feb. 22, 2017, p.25, Ls.15-17.) The GRRS stated that while Mr. Rodriguez professed he dealt with his problems alone, he also reported his fiancée and older brother were supportive of him. (PSI, p.33.)

The district court did not adequately consider the above mitigating factors. Thus, Mr. Rodriguez asserts the district court abused its discretion when it imposed his concurrent unified sentences, because his sentences are excessive considering any view of the facts. The district court should have instead followed Mr. Rodriguez's recommendation by retaining jurisdiction with the same underlying sentences.

CONCLUSION

For the above reasons, Mr. Rodriguez respectfully requests that this Court reduce his sentences as it deems appropriate.

DATED this 24th day of October, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 24th day of October, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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